

# Seattle Journal for Social Justice

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Volume 2 | Issue 2

Article 16

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5-1-2004

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### Recommended Citation

Slye, Ronald C. (2004) "International Human Rights & U.S. Foreign Policy: An Introduction," *Seattle Journal for Social Justice*: Vol. 2 : Iss. 2 , Article 16.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol2/iss2/16>

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## **International Human Rights & U.S. Foreign Policy: An Introduction**

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Ronald C. Slye

There have been few times in history when the United States public has been as engaged in foreign affairs as we are today. Militarily, we are more openly active throughout the globe than at any time in our history; politically, we are preoccupied both domestically and internationally with our proper relationship with other societies; legally, we are challenging and adapting both domestic and international law in response to our perceived interests; and morally, we are challenged by ourselves and others to place our activities within the context of a vision of a just moral order.

The editors of the *Seattle Journal for Social Justice* have brought together five articles that challenge our approach in each of these areas. Each directly addresses a pressing issue facing U.S. foreign policy today, from U.S. military activity in Colombia, the relationship between the United States and the newly formed International Criminal Court, the economic interests that drive our foreign and military policy, and a grass roots effort to bring greater understanding to the conflict between Israel and the Palestinians. While these five articles are by no means comprehensive with respect to the foreign policy issues facing the United States today, they are a representative sample of both the challenges and choices we face. Common to each is a strong belief that morality and law, as articulated most prominently by the international human rights movement, should guide our foreign policy.

The privatization of government and foreign policy, and the economic forces that drive and shape our policies, are the provocative subject of *Bomb Before You Buy: The Economics of War*.<sup>1</sup> Domestically, the United States has undergone a large-scale privatization of traditionally governmental

functions, from prisons to schools to welfare. Naomi Klein exposes the same dynamic in an area that most political conservatives concede is a proper area for government activity and thus not open to privatization: foreign policy and national security. She combines a more traditional critique of U.S. foreign policy as captured by the interests of large U.S.-based multinational corporations with the observation that these same private interests are now directly performing military and foreign policy functions that heretofore have been considered the exclusive domain of government. Klein uses our current involvement in Iraq to illustrate her point. She does not, however, focus on our interest in Middle East oil as a major cause of our invasion of Iraq, but rather the interests of the military industrial complex (first presciently identified by our last President who rose through the ranks of the military, Dwight D. Eisenhower<sup>2</sup>) and corporate America in creating new areas of economic control and exploitation. Thus, Klein points to the large-scale privatization of the Iraqi economy—not, of course, to benefit Iraqi private interests but to benefit U.S. private interests—that is currently underway under the U.S. occupation authority.

The privatization of foreign and military policy described by Klein raises issues of accountability under both domestic and international law. U.S. constitutional law and international law both have traditionally regulated the actions of public officials and other state actors. Domestically, statutory law supplements the state-centered focus of constitutional law and regulates the activities of private non-governmental entities. At the international level, human rights law that traditionally focused on state actors is now increasingly interpreted to cover wrongs committed by non-state actors. Daniel Kovalik describes the use of international human rights law to hold private multinational corporations accountable for human rights and labor law violations in Colombia<sup>3</sup>—violations intertwined with the military and other support provided by the U.S. government to the Colombian government. Kovalik writes about a case he and others have brought in

U.S. federal court on behalf of Colombian plaintiffs against two multinational corporations. Kovalik's piece takes some of the same concerns raised by Klein—the economic exploitation of multinational corporations and the privatization of human rights abuses—and highlights the use of transnational litigation to respond to such abuses. Transnational litigation—the use of a court in one country to bring a claim based on activities in another country—for human rights claims has been effectively used in the United States under a law known as the Alien Tort Claims Statute<sup>4</sup>, which empowers U.S. federal courts to hear claims based upon violations of international human rights law. The Colombian plaintiffs are thus using a law of the United States to challenge specific abuses committed by U.S.-based corporations, and at the same time to challenge U.S. foreign policy. By the time these essays are printed, the U.S. Supreme Court may, for the first time, pronounce on the legitimacy of using this statute to hold individuals and organizations accountable in the U.S. for international law violations committed abroad.<sup>5</sup>

Anne Heindel focuses on another vehicle for using law to address human rights abuses, the International Criminal Court (ICC).<sup>6</sup> International litigation before a tribunal like the ICC provides an alternative to the transnational litigation described by Kovalik. The ICC does not provide a remedy for the Colombian plaintiffs since only natural persons can be defendants before the ICC. Yet the ICC is an important development in the evolution of international law and accountability for human rights abuses. For the first time there is a permanent international institution before which claims of war crimes, crimes against humanity, and other severe violations of human rights may be heard. Over ninety-three states are now parties to the ICC.<sup>7</sup> The United States is not one of them. While the Clinton administration played an active role in negotiating the treaty creating the ICC, our government refused to join the majority of the world in ratifying that treaty. The Bush administration has gone even further than the Clinton Administration in undertaking affirmative efforts to undermine the

legitimacy of the ICC. The Bush administration argues that the ICC is a threat to U.S. foreign policy interests as, among other things, it can be used to launch politically motivated prosecutions against members of the U.S. government and military. This hostility to the ICC is only one example of the current administration's hostility to international law. The Bush administration has pulled back U.S. commitments to major international environmental treaties, to the Geneva Conventions, and even to the domestic statute used by Daniel Kovalik and others to use international law to hold accountable those responsible for severe human rights abuses.

Heindel, a member of an NGO coalition supporting the work of the ICC, directly confronts the U.S. government's concerns and argues how the ICC is not only *not* a threat to U.S. foreign policy, but is in fact an important tool that can be used to support U.S. foreign policy interests. This is particularly true, she argues, with the exponential growth of U.S. concern with international terrorism. The ICC could be used by the United States to provide another vehicle to prosecute and deter individuals who would terrorize civilian populations. Heindel does not expect the current administration to go that far, but instead argues that our government should continue to support and influence the ICC as a potential ally in the war against terrorism, rather than undermine it as a threat to our interests.

Finally, the last two pieces have as their focus the conflict between Israel and Palestine. Successive U.S. administrations have attempted to negotiate a peaceful resolution to the conflict in the Middle East. While there have been intermediate successes, in each case they have been followed by even more violence. The discussion between Sari Nusseibeh and Ami Ayalon,<sup>8</sup> and the critical essay by Peter Lippman,<sup>9</sup> describe an effort outside of normal political and diplomatic channels to address the causes of this seemingly intractable conflict. It is an example of diplomacy and conflict resolution at a personal, grass roots level, rather than at the elite government level. It is a bottom up approach, rather than top down. Ayalon and Nusseibeh identify two important issues: Israeli settlements in Palestinian

territory, and the right of Palestinian refugees to return to Palestine. Their approach is distinctly pragmatic, searching for compromises that each side can make to find common ground, rather than ideal positions that might exacerbate the divide between the parties.

While Peter Lippman welcomes the grass roots nature of the initiative represented by Ayalon and Nusseibeh, he raises some important criticisms of the plan from the perspective of the Palestinians, and places its development within the broader context of peace efforts since the 1993 Oslo Accords. Some are criticisms that I suspect the two others would reject as idealistic; some are criticisms that, with events that have taken place in the short time it took to write this introduction, seem to be no longer relevant; and some will continue to challenge this and other similar non-elite efforts at peacemaking. I suspect that Nusseibeh and Ayalon would reject as too idealistic Lippman's criticism that the proposal creates two ethnocracies by recognizing a Palestinian state for Palestinians and a Jewish state for Jews. While Nusseibeh and Ayalon may be right that the political realities on the ground will not tolerate anything else at the moment, it is indeed troubling that a serious proposal for peace involves such overt discrimination, cabining two ethnic groups into ethnically pure states. To see the danger of such an approach, one need only remember the negotiations that took place in Dayton, Ohio in 1996, when the United States oversaw a peace agreement for the Balkans that created effective ethnocracies in the former Yugoslavia. It was only a few years after this agreement that the Balkans were yet again engulfed in another round of ethnic cleansing .

Lippman's observation that removing Israel to its pre-1967 borders is unrealistic as it would mean removing thousands of Israeli settlers out of Gaza has ironically been undercut by Sharon's recent agreement to do just that. At the same time, however, Sharon has not agreed to remove all of the settlers from the occupied west bank, and for the first time a U.S. president has questioned the desirability of holding Israel to its pre-1967 borders. (Significantly, however, George W. Bush is also the first president to

recognize the right of the Palestinians to their own state.<sup>10)</sup> The ethnic bifurcation of the right of return—so that Palestinians must forego their right to return to their original lands for a right to return to Palestine, and Jews must limit their right of return to the borders of the Israeli state, which Lippman claims is so offensive to most Palestinians—is now official U.S. and Israeli policy. The negative reaction of the Palestinians (along with Europe and the rest of the Arab world), both to the substance of this agreement as well as the unilateral nature of the process by which it was arrived, vindicates Lippman in many of his predictions.

The one area where Nusseibeh, Ayalon, and Lippman agree, is that the stakeholders of any peace plan must be an active part of the process that creates the plan. Lippman criticizes Nusseibeh and Ayalon for only giving lip service to this commitment with respect to Palestinian refugees, and offers some constructive suggestions for how to address this problem. The reaction to the recent plan announced by President Bush and Prime Minister Sharon highlights the dangers of peacemaking without such consultation. It appears that those developing policy at the elite level are still deaf to the voices emanating from the grass roots. One can only hope that increasing the awareness of such initiatives, including criticisms like Lippman's, will raise the noise of such initiatives to a sufficient level that someone in Washington or Tel Aviv will begin to take notice.

All five of these essays illustrate the type of challenges that we as a nation, and we as a global community, face today. Each of them argues for incorporating more justice into our policy-making. Current U.S. policy with respect to the Middle East, the war on terrorism, Colombia, Iraq, and the International Criminal Court are strong on U.S. military might and short on U.S. (and international) justice and human rights. I hope that the decision of the editors to bring these five provocative pieces together will increase your awareness of this deficiency in U.S. foreign policy, and will spur you and others to take up the challenge to call for and help to develop a

foreign policy that lives up to the ideals embodied in the international human rights movement.

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<sup>1</sup> Naomi Klein, *Bomb Before You Buy: The Economics of War*, 2 SEATTLE J. SOC. JUST. 331 (2004).

<sup>2</sup> Dwight D. Eisenhower, Farewell Radio and Television Address to the American People (Jan. 17, 1961), in PUBLIC PAPERS OF THE PRESIDENT, Item 421, at 1038.

<sup>3</sup> Daniel Kovalik, *War and Human Rights Abuses: Colombia and the Corporate Support for Anti-Union Suppression*, 2 SEATTLE J. SOC. JUST. 393 (2004).

<sup>4</sup> 28 U.S.C. § 1350 (2003).

<sup>5</sup> U.S. v. Alvarez-Machain, 331 F.3d 604 (9th Cir. 2003), *cert. granted*, 72 USLW 3248 (U.S. Dec. 1, 2003) (No. 03-485) is on the current U.S. Supreme Court docket and a decision is expected by Summer 2004. This will be the first decision in which the US Supreme Court rules on the constitutionality and scope of the Alien Tort Claims Statute.

<sup>6</sup> Anne K. Heindel, *The Counterproductive Bush Administration Policy Toward the International Criminal Court*, 2 SEATTLE J. SOC. JUST. 345 (2004).

<sup>7</sup> As of Nov. 28, 2003, ninety-three countries are State Parties to the Rome Statute of the International Criminal Court. Available at <http://www.icc-cpi.int/php/statesparties/allregions.php> (last visited Apr. 24, 2004).

<sup>8</sup> Ami Ayalon & Sari Nusseibeh, *Finding Common Ground: The Missing Pieces of Middle East Peace*, 2 SEATTLE J. SOC. JUST. 415 (2004).

<sup>9</sup> Peter Lippman, *The Nusseibeh-Ayalon Plan: Common Ground, or Quicksand?*, 2 SEATTLE J. SOC. JUST. 447 (2004).

<sup>10</sup> Dana Milbank, *Bush Endorses Sharon's Withdrawal Plan: President Won't Back Palestinians' 'Right of Return' to Israel*, WASH. POST, Apr. 14, 2004.